

REMARKS / DISCUSSION OF ISSUES

Claims 1-3, 6-8 and 10 are pending in the application. Claims 1 and 8 are independent claims. Unless indicated to the contrary, claims are amended for non-statutory reasons, such as to delete European-style claim phraseology. No new matter is added.

Objection to the Specification

The objection to the Abstract is believed to be improper. Notably, the Abstract was filed as a separate sheet along with the filing of documents under 35 U.S.C. § 371, and is listed as such on PAIRS. Under PCT Rule 4, this Abstract serves all subsequent filings, including the National Stage in the U.S. Withdrawal of this objection is respectfully requested.

Applicants thank the Examiner for providing information about recommended section headings. However, Applicants respectfully decline to add the headings. Section headings are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 CFR § 1.51(d) are only guidelines that are suggested for applicant's use. (See "Miscellaneous Changes in Patent Practice, Response to comments 17 and 18" (Official Gazette, August 13, 1996) [Docket No: 950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77")). (See also MPEP § 608.01(a)).

Rejections Under 35 U.S.C. § 102

1. Claims 1-3 and 8 were rejected under 35 U.S.C. § 102(b) as being clearly anticipated by *Ascher* (U.S. Patent 5,355,883).

2. Claims 1-5 and 8-10 were rejected under 35 U.S.C. § 102(b) as being clearly anticipated by *Hamilton* (U.S. Patent 5,978,693).

For at least the reasons provided herein, Applicants respectfully submit that the pending claims are patentable over the applied art.

Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

At the outset, Applicants note that the subject matter of claims 4-5 and 9-10 has been incorporated into claims 1 and 8, respectively. Claims 4-5 and 9-10 were not rejected in view of *Ascher*, and thus are patentable thereover.

Claim 1 is drawn to a wearable device having an electrode. The electrode features

"...motion artifact detection means having a thin film pressure sensor arranged on a rear surface of the electrode, said rear surface being opposite the contact surface...

Claim 8 is drawn to an electrode assembly and includes a similar feature.

By contrast, the reference to *Hamilton* includes a fiber optic sensor 212 and fails to disclose or suggest a thin film pressure sensor as specifically featured in claims 1 and 8.

Because *Hamilton* fails to disclose at least one feature of independent claims 1 and 8, a prima facie case of anticipation cannot be established based thereon. Thus, claims 1 and 8 are patentable over the applied art. Moreover, dependent claims 2-3 and 6-7, which depend from claim 1, are patentable for at least the same reasons.

Rejections Under 35 U.S.C. § 103

The rejection of claims 6 and 7 has been considered. These claims depend from claim 1 and are patentable for at least the reasons set forth above.

Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
Phillips Electronics North America Corp.

A handwritten signature in black ink, appearing to read 'WSF', is written over a horizontal line.

by: William S. Francos (Reg. No. 38,456)

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